



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1996

Mr. John M. Oliver
Assistant District Attorney
Tarrant County
Hospital District Office
1025 South Jennings, Suite 300
Fort Worth, Texas 76104

OR96-2005

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101523.

The Tarrant County Hospital District (the "hospital district") received a request for "all documents provided to the Hospital District that were prepared by Ernst & Young (or Ernst & Young's representatives) . . . to assist the district in 'analyzing and evaluating the strategic financial alternatives for John Peter Smith Hospital.'" The information responsive to the request is contained in a consultant's report that Ernst & Young prepared and presented to the hospital district's board of managers during a closed session in July, 1996. You contend that the consultant's report, a copy of which you have submitted to this office for review, is excepted from disclosure in its entirety under sections 552.104, 552.105, and 552.111 of the Government Code.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 (1987) at 14, 298 (1981) at 2. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting

¹The requestor also seeks information concerning the amount of compensation that the hospital district has paid to Ernst & Young. You believe that this information is public and state your intention to promptly release this information to the requestor.

the policymaking processes of the governmental body. Section 552.111 does not, however, except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5.

The consultant's report is entitled "Evaluation of Strategic Financial Alternatives and Recommendation" and contains Ernst & Young's evaluation of the hospital district's position in the marketplace and its strategic options for the future. Having reviewed the report, we conclude that it consists almost entirely of the consultant's advice, recommendations, and opinions regarding the future viability of the hospital district, an issue that significantly impacts the policymaking processes of the hospital district. Thus, the opinion portions of the report are excepted from disclosure pursuant to section 552.111. The report does, however, contain some factual information that is severable from the opinion portions of the report and is not excepted from disclosure under section 552.111. We have marked the factual information that is not protected by section 552.111.

As you have also invoked sections 552.104 and 552.105, we must consider whether the severable factual information in the report is within the scope of either of these exceptions to disclosure. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 (1990) at 4. You contend that releasing the report would harm the hospital district's ability to compete in the Dallas/Fort Worth region, but you have not explained how releasing the purely factual information in the report would harm the marketplace interests of the hospital district. Consequently, we conclude that you may not withhold the purely factual information in the report from disclosure under section 552.104.

Section 552.105 excepts from disclosure information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 was designed to protect a governmental body's planning and negotiating position with respect to particular transactions. Open Records Decision No. 564 (1990) at 2. This exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or abandoned. Open Records Decision Nos. 357 (1982) at 3, 310 (1982) at 2. None of the purely factual information in the report is the type of information that is protected by section 552.105. As the severable factual information in the consultant's report is not excepted from disclosure under sections 552.104, 552.105, or 552.111, the hospital district must release the factual information to the requestor. The hospital district may withhold the remainder of the consultant's report under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101523

Enclosures: Submitted documents

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